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# Maine Labor Relations Board Annual Report, Fiscal Year 1984

Maine Labor Relations Board

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## ANNUAL REPORT

### MAINE LABOR RELATIONS BOARD

Fiscal Year 1984

Submitted by

Parker A. Denaco, Executive Director - July 1, 1984

The following report is submitted herewith pursuant to Section 968, paragraph 7, and Section 979-J, of Title 26, Maine Revised Statutes.

This past year, the Maine Labor Relations Board responded to requests for its services in all areas of responsibility charged to it, including unit formulation and clarification, certification and decertification elections two of which were conducted state-wide by mail ballot, the processing and adjudication of prohibited practice complaint cases, and administrative and judicial appellate proceedings. As the statistics in this report will show, there has been a decline in the need for dispute resolution techniques involving mediation and fact-finding during the past fiscal year; however, we believe this to be a cyclical phenomenon attributable to a number of factors which include economic climate, number of expiring contracts, and the prior successes of both the mediation and fact-finding processes. The precipitous decline in fact finding cases is further accentuated by the fact that nearly twenty (20%) percent of the fact finding cases filed settled prior to hearing and without the need for a report to issue. Teacher bargaining units remain the single largest user of the fact finding process.

Conversely, we commence the 1985 fiscal year with the master agreement between the State of Maine and the Maine State Employees Association still unresolved for more than 80% of the State's work force. The collective bargaining agreements between the State of Maine and the Maine State Employees Association for a majority of state employees have remained unresolved for more than a year, reflecting the first time that these parties have had to make use of the interest arbitration procedures of the State Employees Labor Relations Act in order to attempt to reach settlement.

The 1984 session of the 111th Legislature followed the mandate that it had passed a year earlier in the form of Chapter 412 of the Public Laws of 1983 entitled, "An Act to Authorize the Supreme Judicial Court to Provide for Collective Bargaining for Judicial Department Employees." As the result of the 1983

legislation; a Joint Select Commission headed by Dean James Carignan<sup>1</sup> of Bates College (also a member of the State Panel of Mediators) studied the needs peculiar to collective bargaining for Judicial Department employees and recommended legislation to the 1984 session of the 111th Legislature. That legislation was known as L.D. 2175, "An Act to Create the Judicial Employees Labor Relations Act." The Judicial Employees Labor Relations Act will become effective on July 25, 1984, and may be found at Sections 1281 through 1293 of Title 26 of the Maine Revised Statutes.

With vacancies occurring last year in both the chair and the employer representative positions on the Board, there were numerous changes in its composition. The current primary and alternate members of the Maine Labor Relations Board are as follows:

Chairman

Sidney W. Wernick

Alternate Chairmen

Donald W. Webber  
William M. Houston

Employee Representative

Harold S. Noddin

Alt. Employee Representatives

Russell A. Webb  
Gwendolyn Gatcomb

Employer Representative

Thacher E. Turner

Alt. Employer Representatives

Linda D. McGill  
Carroll R. McGary

It should be noted that during the past year, the Board has been under the superlative and experienced leadership of Sidney W. Wernick, Esquire, a retired Justice of the Maine Supreme Judicial Court. Since Mr. Wernick has recently accepted an appointment to return as an active retired justice of the Maine Supreme Judicial Court, the Board is projecting a vacancy in its chair which will occur during the first quarter of Fiscal Year 1985.

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<sup>1</sup> Other members of the Joint Select Commission studying the concept of collective bargaining for Judicial Department employees were: Donald F. Fontaine, Esquire, Portland; George A. Hunter, Augusta, of the Maine Municipal Association; Charles J. O'Leary, Brewer, of the Maine AFL-CIO; and Gerald E. Rudman, Esquire, Bangor. Professor David D. Gregory of the University of Maine School of Law served as Reporter to the Advisory Committee.

In spite of the extension of collective bargaining rights to county employees under the provisions of Chapter 137 of the Public Laws of 1981 and to judicial employees under the provisions of Chapter 702 of the Public Laws of 1984, the size of the permanent staff of the Maine Labor Relations Board has remained constant even though the scope of the workload and responsibilities have increased. In an attempt to continue to operate without the necessity of adding to the full time personnel count, the Board participated in demonstrations and trials of word processing equipment during the past fiscal year. Barring unexpected delays, two word processing work stations should be installed at the Board during the first quarter of Fiscal Year 1985 in order to assist with the preparation of transcripts, memoranda, draft decisions, and routine correspondence of a repetitive nature.

During the past year, the Maine Labor Relations Board not only continued its policy of providing information to persons and organizations covered by the various acts it administers, but also of insuring that its professional staff is familiar and up-to-date with the recent developments in labor relations matters. The Board's dispute resolution specialist, Robert Goldman, continues in his collateral duties as Executive Director of the New England Consortium of State Labor Relations Agencies. Coincidental with this function, the New England Consortium held one of its meetings for the staff of member agencies in Maine in June of 1984. All professional staff members of the Maine Labor Relations Board attended that training session.

The professional staff members of the Maine Labor Relations Board have also been involved in training as well as being trained during the past year. One attorney/examiner taught an introductory course in labor relations for two semesters at Central Maine Vocational Technical Institute while another offered a course at the University of Maine in Augusta. Members of the professional staff have attended training offered by the Association of Labor Relations Agencies, the Maine Bar Association, the American Bar Association, the Boston Bar Association, and the American Arbitration Association during the past year. The Executive Director lectured at a labor seminar conducted at the University of Maine in Orono in August and attended the annual meeting of the Society of Professionals in Dispute Resolution, of which he is a charter member.

The Executive Director maintained an active affiliation with the Committee on Public Sector Bargaining of the Labor Law Section of the American Bar Association. He continues as one of the few public members of that Committee and attended their

annual winter meeting in February. He also serves as co-chair of the Maine Bar Association's Labor and Employment Law Section. He was asked to make presentations before a meeting of the National Public Employers Labor Relations Association in Maine last fall and before labor practitioners affiliated with the Central Labor Law Office of the United States Air Force this spring.

On the national scene, the Maine Labor Relations Board maintained contact with counterpart agencies both within and outside New England as well as with organizations which serve labor relations agencies. In particular, the agency continued its active affiliation with the Association of Labor Relations Agencies which plays an important role with respect to member agencies such as the Maine Labor Relations Board. Continuation of this active affiliation is particularly important since the State of Maine, the City of Portland and the Maine Labor Relations Board will be hosting the 1985 Annual Meeting of the Association of Labor Relations Agencies. This Association serves as a coordinator between the composite of labor relations and mediation agencies from the federal sectors, states and subdivisions, and the national and provincial governments of the United States and Canada, respectively. There is great potential for the 1985 Annual Meeting of the Association of Labor Relations Agencies to be successful since it will mark the first time in four years that that meeting has been held on the East Coast of the United States.

This past year, the Maine Labor Relations Board conducted two state-wide mail ballot elections, one of which is reflected in the election statistics reported below. The other mail ballot election was conducted as a courtesy based upon an agreement between labor and management relative to an internal union policy on fair share. The agency staff responded affirmatively to this request and was able to lend its skills and expertise to the methodology used in administering and tabulating the courtesy mail ballot election.

The remainder of this report is devoted to statistics generated through the public sector functions of the Maine Labor Relations Board. During Fiscal Year 1984 (the twelfth year of its operations), the Maine Labor Relations Board received and accepted ten (10) voluntary agreements on the establishment of, or accretion to, collective bargaining units throughout the public sector jurisdiction of the Board. This represents a significant decline from the normal level of such filings and is contrasted with the abnormal and historically high figure of thirty-four (34) filed in Fiscal Year 1982 and the twenty-five (25) filed in Fiscal Year 1983. These high levels were a consequence of the organizing among county employees who became

enfranchised under the labor relations statutes early in Fiscal Year 1982. Voluntary agreements on the composition and scope of bargaining units were filed during Fiscal Year 1982 in a total of eight counties (including multiple unit recognitions in some instances), whereas only three counties were involved in voluntary agreements in Fiscal Year 1983 and two in Fiscal Year 1984, reflecting increasing saturation in county bargaining units.

Voluntary agreements as to bargaining units involved the following public entities in Fiscal Year 1984:

- Bar Harbor
- Brewer Wastewater Treatment District
- Gardiner
- Hancock County
- Penobscot County
- Rockland
- Rumford/Mexico Sewerage District
- Southern Oxford County Vocational Region #1
- Windham

Although voluntary agreements are sometimes filed initially, more often they are agreed upon after a petition has been filed with the Maine Labor Relations Board for unit determination or unit clarification proceedings. These petitions either ask the Board to construct a new bargaining unit or to redefine an existing one. Thirty-two (32) such petitions were filed in Fiscal Year 1984 as of the time statistics were compiled for this report in mid-June 1984.

In addition to the foregoing numbers, three (3) matters were carried over from Fiscal Year 1982. One of the carry-overs involved the state institutional bargaining unit and a request to create a separate unit for corrections employees. The Board upheld a hearing examiner's report denying this request. The institutional unit was the subject of a challenge election discussed elsewhere in this report.

The Board also has before it thirty-four (34) separate petitions filed by the Governor's Office of Employee Relations in the final months of 1982 to exclude some 550 positions from collective bargaining in various departments and agencies of State government. These petitions are largely predicated upon an amendment to the State Employees Labor Relations Act enacted by the 110th Legislature (Chapter 381, P.L. 1981). For the past several months that request has been before a hearing examiner and it is expected that these hearings will continue, at a minimum, through the course of the next fiscal year.

Unit determinations or clarifications filed during Fiscal Year 1984 involved the following communities and entities:

Bar Harbor	Winslow
Biddeford	Windham
Brunswick	Brewer Wastewater Treatment Plant
Dixfield	Cumberland County
Gardiner	Knox County
Madison	Lincoln County
Mexico	Oxford County
Oakland	Penobscot County
Rockland	Rumford/Mexico Sewerage District
Saco	Southern Aroostook Coop. School District
Scarborough	Southern Oxford County Voc. Region #1
Turner	State of Maine
Waldoboro	University of Maine
Wells	

After the scope and composition of the bargaining unit is established - by agreement or after hearing - the process of determining the desire of the employees on the question of representation takes place. During Fiscal Year 1984, there were seven (7) voluntary recognitions of a bargaining agent in which the public employer agreed to recognize the petitioning union as bargaining agent without the necessity for an election. Where the parties do not agree and there is no voluntary recognition by the public employer, the Executive Director conducts an election to determine the desires of the employees on the question of representation. Twenty-one (21) such requests were received in Fiscal Year 1984 as of the date of compilation, as compared with thirty-one (31) requests in Fiscal Year 1983. There were six (6) holdovers from Fiscal Year 1983 for a total of twenty-seven (27) election requests requiring attention during the fiscal year. It should be noted that the height of organizational activity among county employees took place during Fiscal Year 1982, the year in which county employees won legislative enfranchisement under the public employee labor laws, resulting in nineteen (19) separate elections among county employees in that fiscal year and accounting, in part, for the reduction in requests received during the past fiscal year.

In addition to the twenty-one (21) election requests received by the Board in Fiscal Year 1984, the Board received sixteen (16) requests (including one re-file) for decertification/certification which involved challenges by a petitioning organization to unseat the incumbent organization as bargaining agent for the employees in the unit. There were also seven (7) such petitions carried over from Fiscal Year 1983. Among these were petitions challenging the status of the existing bargaining agent for one of the major State bargaining units. In this matter, two

organizations were seeking to challenge the bargaining status of the incumbent union. This is notable since it is the first time since the original organization of state employees that a challenging petition has survived the initial scrutiny to determine whether the petitions of the insurgent groups have met the threshold requirements of the Board's Rules and Procedures. Although such petitions have been filed in the past, they have been dismissed for failure to meet those threshold requirements. In the current filings, the Board rejected an attempt to sever a portion of the existing unit and establish two separate units. Having done this, the Board ordered the Executive Director to conduct an election among employees in the existing unit. A mail ballot election was conducted and ballots were counted in early June. The ballot count resulted in the incumbent union being re-certified as the bargaining agent.

The Board also processed two (2) straight decertification petitions in Fiscal Year 1984 where no "new" union sought bargaining agent status. There were also two (2) holdovers from Fiscal Year 1983. These petitions do not involve one labor organization seeking to unseat another but are merely attempts by a group of employees to deprive an incumbent organization of its standing as bargaining agent for the employees in the unit. Thus, the total election requests processed by the Board during Fiscal Year 1984 was fifty-four (54): twenty-seven (27) (including holdovers) election requests; twenty-three (23) certification/decertification petitions (including holdovers); and four (4) straight decertification petitions. Communities and public entities involved with such representation matters during Fiscal Year 1984 were:

Auburn	Waldoboro
Baileyville	Waterville
Bangor	Wells
Bar Harbor	Wilton
Brewer	Windham
Bridgton	Winslow
Brunswick	Winthrop
Gardiner	Aroostook County
Lincoln	Cumberland County
Madison	Hancock County
Ogunquit	Lincoln County
Rockland	Oxford County
Saco	Penobscot County
Sanford	Rumford-Mexico Sewerage District
Scarborough	Sagadahoc County
South Berwick	Southern Oxford County Vo. Region #11
Van Buren	State of Maine

The activities of the Panel of Mediators, more fully reviewed in the Annual Report of the Panel of Mediators submitted to the Governor pursuant to Section 965, paragraph 2, of Title 26, Maine Revised Statutes, is summarized for purposes of this report. The number of new requests received in Fiscal Year 1984 totaled seventy-two (72). This compares with the ninety-five (95) requests for mediation services received in Fiscal Year 1983 and eighty-three (83) separate bargaining units. However, the level of services provided by the Panel of Mediators is more fully appreciated when one realizes that the seventy-two (72) requests in actuality involved requests for mediation services for eighty-two (82) separate bargaining units, with several of those requests being from bargaining agents that represent more than one group of employees, each of which have separate contracts and bargain separately. In addition, the Panel handled ten (10) carry-over mediations filed during the last few weeks in Fiscal Year 1983. The figures for the past few fiscal years emphasize what has been happening in the realm of mediation services: the public sector collective bargaining community has broadly accepted and recognized the high level of skills acquired over the years by the dedicated members of the Panel of Mediators. This broad acceptance is reflected in the level of requests for the services of the Panel over the years and particularly in the success rate of their efforts. In Fiscal Year 1983, the Panel received 95 requests (119 separate units involved); in Fiscal Year 1982, 83 requests; Fiscal Year 1981, 83 requests; Fiscal Year 1980, 98 requests; and Fiscal Year 1979, 81 requests.

In Fiscal Year 1983, the number of mediation-man-days expended on matters which had completed the mediation process was 138, compared with 144 in Fiscal Year 1982. Comparison of the average mediation-man-days expended per case (of those matters which had completed the mediation process) was 1.74 for Fiscal Year 1983 compared with a figure of 2.00 for Fiscal Year 1982 and 1.83 for Fiscal Year 1981. The slight differences are not considered to have statistical importance. The slight decline in average days expended per case is due in part to a few filings where separate petitions were filed for each of several bargaining units of the same employer, but the assigned mediator performed consolidated services for the several units rather than mediation for each unit separately. The same factor helps to explain somewhat the extraordinary success rate for the Panel of Mediators during Fiscal Year 1984. The success rate for matters which had completed the mediation process (matters still in mediation or settled prior to actual mediation are not counted in calculating the success ratio) reached a near record 71%, surpassing the settlement rate of 69% reached in Fiscal Year 1982 and just short of the record success rate of 73% achieved

in Fiscal Year 1983. In large measure the successes achieved by the Panel of Mediators over the past few years is clear evidence of the high degree of competence and levels of experience represented by the individual members of the Panel and the recognition of this expertise on the part of the Board's clientele.

Fact-finding is the second step in the typical dispute resolution sequence as set forth in the various labor relations statutes. In Fiscal Year 1984, the number of requests for fact-finding declined significantly from Fiscal Year 1982 and Fiscal Year 1983. In each of these preceding fiscal years, the filings were significantly below the record number reached in Fiscal Year 1981. In Fiscal Year 1984, the number of requests received was 16, down from the 28 filed in Fiscal Year 1983 and 30 filed in Fiscal Year 1982. The notably higher extraordinary success rate of the mediation process in Fiscal Year 1984, Fiscal Year 1983, and Fiscal Year 1982 undoubtedly accounts for the reduction in fact-finding requests since matters not resolved in mediation very often go on to the fact-finding process. Of the sixteen (16) requests filed for fact-finding, only thirteen (13) proceeded to hearing with one case being heard, by agreement, by a single fact-finder. The most notable fact-finding case of the past year was the request involving five of the State employee bargaining units. The entities involved in fact-finding requests during Fiscal Year 1984 were:

Auburn	Turner
Biddeford	Vanceboro
Freeport	Van Buren
Kittery	Waterville
Portland	Wells-Ogunquit
Rockland	Vocational Technical Institutes
Saco	Portland Water District
Scarborough	State of Maine

The number of prohibited practice complaints filed with the Board during Fiscal Year 1984 was only slightly (and not significantly) higher than the filings in Fiscal Year 1983, i.e., there were thirty-one (31) new filings in Fiscal Year 1984 as compared with thirty (30) in Fiscal Year 1983. Each of those years is substantially down from the near record level of sixty (60) new complaints filed in Fiscal Year 1981. However, there were twenty-nine (29) carry-over matters from prior fiscal years which required the attention of Board personnel during Fiscal Year 1984, making a total of fifty (50) complaint matters pending during the year. The Board devoted a total of thirty-eight (38) days in hearing contested prohibited practice complaints during the fiscal year. This figure is entirely separate from days devoted to deliberation of cases and other matters which come before the full Board. A total of

twenty-seven (27) cases were decided by the Board by formal decision during the year, a significant increase from the sixteen (16) decisions issued in Fiscal Year 1983. Twenty-six matters were settled or withdrawn or were the subject of a consent degree or dismissal. Cases not disposed of either were in some phase of the pre-hearing or hearing process, or had completed the full hearing stage and were awaiting briefs, deliberation by the Board, or decision drafting and formal approval by the Board members.

As had been stated in past reports of the activities of this Board, the workload imposed on the Board's personnel and resources is not reflected in the base numbers. Each case which goes through the hearing and decision process requires, in addition to the complexities of processing, scheduling, and case management efforts, considerable effort on the part of the staff attorney/examiners in case and issue analysis, legal research, and decision writing. Additional demands have been placed on this personnel commitment as the result of an increase in appellate activity from prior reporting periods. This has resulted in requirements for staff attorneys to appear in either the Superior Court or Supreme Judicial Court to argue in support of Board decisions or policy. The communities and entities involved in prohibited practice complaints filed with the Board during Fiscal Year 1984 were:

Auburn	Pittsfield
Augusta	Saco
Bangor	Sanford
Brunswick	Washburn
Ellsworth	Wells
Gray-New Gloucester	Winthrop
Kittery	Baxter Park Authority
Lubec	Kennebec County Commissioners
Madison	Penobscot County
Old Town	Rumford/Mexico Sewerage Treatment District
Oxford Hills	State of Maine

The Board is anticipating that it will be called upon to render its services in the establishment of bargaining units and the designation of bargaining agents shortly after the Judicial Employees Labor Relations Act becomes effective on July 25, 1984. Since the judicial system was involved in the genesis of this legislation, the transition to bargaining rights should not be unwieldy or especially traumatic. Conversely, the prohibited practice complaint process under the Judicial Employees Labor Relations Act will require additional intervention by the Executive Director or his designee which is a dissimilar process from the handling of such complaints under the other labor relations acts administered by the Board.

The report may be summarized by the following chart which makes comparisons rated in terms of percentile changes in each category from one succeeding year to the next:

	<u>FY 1978</u>	<u>FY 1979</u>	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>	<u>FY 1983</u>	<u>FY 1984</u>
Unit Determination/ Clarification Requests Filed	+124%	-33%	+64%	-48%	+54%	+72%	-20%
Bargaining Agent Election Requests	+86%	+9%	+19%	-28.5%	+10%	-31%	-32%
Decertification Election Requests	-14%	+14%	-21%	+4%	+10%	+71%	-21%
Mediation Requests	-11%	unchg.	+21%	-15%	unchg.	+14.5%	-24%
Fact Finding Requests	unchg.	-25%	+12%	+29%	-38%	-6.6%	-43%
Prohibited Practice Complaints	-22%	+97%	-22%	+9%	-41%	-14%	+0.03%

As suggested in the annual report for prior fiscal years, the above comparative review suggests the possibility that the Board has been in a period of either stabilization or manageable growth in terms of the overall demand for its services. The past few years have seen steady, and on occasion, remarkable, growth in the demand for services provided by the Board. Whether the trend toward the leveling off of the demand for services is the result of a relative "saturation" of the public sector community in organizational and representation terms or is cyclical and reflective of the economy is difficult to discern. The demand for services has reached cyclical levels in each segment of the Board's activity coupled with expanding responsibilities that have placed pressure on the Board's limited staff and resources which has not been expanded since the last position authorization in 1978. This high level of activity continues and, with the recent introduction of county and judicial employees into the stream of public sector collective bargaining, it is certainly reasonable to expect that the level of activity, taken as a whole, will remain at the levels established in the past three or four years, although records may not be set in any single area. As indicated in the report for Fiscal Year 1982, this also requires us to consider the long-term eventuality of adding professional position(s) to the staff.

As has been expressed in prior annual reports, we are pleased to state that the Maine Labor Relations Board, through the processes established in the public sector labor relations statutes, is offering, and will continue to offer, effective

and expeditious means for protecting employee rights, insuring compliance with statutory mandates, and settling disputes through the prohibited practice and/or the dispute resolution processes provided under the statutes. We are pleased to observe once again that, contrary to trends elsewhere in the United States, public sector work stoppages or strikes have been insignificant during the past year, with none occurring involving any employees covered by any of the labor relations acts administered by the Board. It is apparent that the statutory scheme which is designed to provide a methodology for the peaceful and orderly resolution of labor disputes is working. We trust that a substantial part of this success may be attributable to high levels of confidence generated by the Board's clientele which continues to place increasing reliance on the Board and the skills, competence, dedication, and professionalism of its staff.

Dated at Augusta, Maine, this 29th day of June, 1984.

MAINE LABOR RELATIONS BOARD

A handwritten signature in dark ink, appearing to read "Parker A. Denaco", is written over a horizontal line.

Parker A. Denaco  
Executive Director